

9 Non-tax deductibility of bribes

This chapter assesses whether Croatia prohibits the tax deduction of bribes to foreign public officials for all tax purposes, and whether this prohibition is contained in an explicit provision.

9.1. OECD standards on the non-tax deductibility of bribes

The final criterion on the legal and institutional framework is the non-tax deductibility of bribes to foreign officials. The 2009 Anti-Bribery Recommendation VIII ask countries to “explicitly” prohibit such deductions:

Tax Deductibility

VIII. URGES Member countries to:

i) fully and promptly implement the Council Recommendation on Tax Measures for Further Combating Bribery of Foreign Public Officials in International Business Transactions (OECD, 2009^[1]), which recommends in particular “that Member countries and other Parties to the OECD Anti-Bribery Convention explicitly disallow the tax deductibility of bribes to foreign public officials, for all tax purposes in an effective manner” [...].

9.2. Tax deductibility of bribes in Croatia

Croatia's Profit Tax Act determines the tax payable on income or profits. Taxpayers include both natural and legal persons (Art. 2). The tax payable by a taxpayer is a function of its tax base (Art. 32). The tax base is the difference between a taxpayer's revenues and expenditures, subject to certain adjustments (Art. 5).¹

Croatia prohibits the tax deduction of bribes, though not via an explicit provision. Under Profit Tax Act Art. 7(1)(9), the tax base is increased “by benefits and other forms of property benefits given to natural or legal persons for an event to take place or not take place, i.e. to perform a certain action, for example better or faster than usual, or for its non-performance”. The tax effect of such benefits is therefore neutral. A taxpayer would record the benefit as an expenditure which reduces the tax base under Art. 5, only for the tax base to then increase by a corresponding amount under Art. 7(1)(9). Benefits under Art. 7(1)(9) cover bribes to foreign public officials, according to Croatian authorities. The combined effect of these provisions is therefore to prohibit the tax deduction of bribes. Croatian authorities are not aware of cases in which Art. 7(1)(9) was applied to a bribe, however.

The absence of an explicit prohibition on the tax deduction of bribes does not meet OECD standards. The OECD Working Group on Bribery has repeatedly recommended that countries enact an explicit, legally binding provision, regardless of whether bribes are deductible under pre-existing legislation.²

9.3. Conclusion

Croatia prohibits the tax deduction of bribes through a range of provisions in the Profit Tax Act. However, the 2009 Anti-Bribery Recommendation demands an explicit, legally binding provision on the non-deductibility of bribes. To strengthen its anti-foreign bribery framework, Croatia could consider enacting such a legislative provision.

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Notes

¹ Profit Tax Act (*Zakon o Porezu na Dobit*), Official Gazette no. 177/04, 90/05, 57/06, 146/08, 80/10, 22/12, 148/13, 143/14, 50/16, 115/16, 106/18, 121/19, 32/20, 138/20.

² (OECD, 2014^[2]), paras. 178-181 and Recommendation 11(a); (OECD, 2011^[3]), paras. 86-90 and Recommendation 7(a); (OECD, 2012^[4]), paras. 113-115 and Recommendation 12(a); (OECD, 2011^[5]), paras. 89-91 and Recommendation 13(a); (OECD, 2013^[6]), paras. 115-121 and Recommendation 7(a); (OECD, 2005^[7]), paras. 166-173 and 179(p); (OECD, 2004^[8]), paras. 142-148 and Recommendation 13; (OECD, 2005^[9]), paras. 87-88 and Recommendation 13; (OECD, 2004^[10]), paras. 40-41 and 145(a); (OECD, 2005^[11]), paras. 58-60 and 238(a); (OECD, 2006^[12]), paras. 157-164 and 182.



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